A **FAIRISE ODYSSEY (M) SDN BHD v. TENAGA NASIONAL BHD**

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
UMI KALTHUM ABDUL MAJID JCA
ZALEHA YUSOF JCA
B [CIVIL APPEAL NO: W-02(NCVC)(W)-1267-07-2014]
22 MAY 2018

TORT: *Trespass – Trespass to land – Allegation of continuing trespass – Erection of transmission lines on proprietor's land for construction of power sub-substation –*
C *Whether approval by State Authority obtained – Whether there was implicit approval – Whether approval to construct transmission lines must be in writing – Whether 'State Executive Committee' State Authority – Whether approval must be given by State Executive Committee – Whether there was continuing trespass –*
D *Whether Electricity Supply Act 1990 or Electricity Act 1949 applicable in determining claim*

LAND LAW: *Trespass – Trespass to land – Erection of transmission lines on proprietor's land for construction of power sub-substation – Whether approval by State Authority obtained – Whether there was implicit approval – Whether approval to construct transmission lines must be in writing – Whether 'State*
E *Executive Committee' State Authority – Whether approval must be given by State Executive Committee – Whether there was continuing trespass*

In the 1980s, the State Government of Negeri Sembilan decided to develop a piece of land ('the land') into an industrial zone. It approved the alienation
F of the land to Metro Angkasa Sdn Bhd ('Metro Angkasa') in 1990. However, the alienation was cancelled in 1992 when Metro Angkasa failed to pay the land premium within the stipulated period. In 1992, a separate individual title was issued and registered in the respondent's ('the defendant') name for a strip of land, which had originally been part of the land, for the construction of a power sub-station. For this purpose, the defendant erected
G transmission lines on the land. In the meantime, Metro Angkasa successfully appealed against the cancellation of the sale of the land to it; the land was alienated to Metro Angkasa. In 1996, Metro Angkasa charged the land as security to Southern Bank for banking facilities granted to it. The land was foreclosed when Metro Angkasa defaulted in its monthly payments and was
H sold to CIMB Bank Bhd ('CIMB') in 2006. In 2010, CIMB entered into a sale and purchase agreement to sell the land to Elitprop Sdn Bhd and at the latter's request, CIMB transferred the land to the appellant ('the plaintiff'), its nominee. The plaintiff objected against the existence of the transmission lines. The plaintiff commenced a claim at the High Court, against the
I defendant, on the grounds of continuing trespass as the transmission lines were erected on the land without the approval of the State Authority. Refuting the claim, the defendant argued that (i) it had the implied approval

of the State Authority; (ii) it was improbable that the State Authority would have alienated the land for the construction of the sub-station if it had not approved the erection of the transmission lines on the land; and (iii) a sub-station served no purpose unless it was connected to the electricity grid by the transmission lines. In considering whether the State Authority had given their approval, the Judicial Commissioner ('JC') considered two sub-issues, namely (i) whether the approval for the defendant to construct the transmission lines must be in writing; and (ii) whether the approval must be given by the State Executive Committee. The parties at the High Court disputed, *inter alia*, as to whether the Electricity Supply Act 1990 ('1990 Act') or its precursor, the Electricity Act 1949 ('1949 Act') was applicable. The JC was of the view that the 1990 Act was applicable as the erection of the transmission lines commenced in 1992. The JC further held that both s. 52 of the 1949 Act and s. 12 of the 1990 Act did not require the approval of the State Authority to be expressly in writing and the approval must be given by the State Executive Committee. As the plaintiff failed to prove continuing trespass, the JC proceeded to dismiss the plaintiff's claim. Hence, the present appeal.

Held (dismissing appeal with costs)
Per Umi Kalthum Abdul Majid JCA delivering the judgment of the court:

(1) The JC's finding that the provision of the 1990 Act applied to this case was correct as the erection of the transmission lines commenced in 1992. Section 12 of the 1990 Act did not require the approval of the State Authority to be expressly in writing. Section 12 of the 1990 Act further permits implied approval of the State Authority. There was no reason to disturb the JC's finding that the State Authority had implicitly, *vide* conduct of the relevant parties, approved the erection of the transmission lines on the land. (paras 25, 26 & 28)

(2) With regards to the issue of which person or body of persons who actually represents the 'State Authority', the court agreed with the JC's reference to the Negeri Sembilan State Constitution, s. 3 of Part 1 of the Interpretation Acts 1948 and 1967 and the case of *PP v Haji Harun Haji Idris* for this determination, with one correction. Instead of referring to the State Executive *Committee* as being the body of persons exercising the executive functions in the name of the Ruler, it should have been reference to the State Executive *Council*. The minutes of the State Executive Council, dated 8 August 1990, referred to by the JC, served the purpose of showing the State Authority's approval of the construction of the transmission lines. If the State Authority did not approve the construction of the transmission lines, it would not be possible for the said minutes of the State Executive Council to be so worded. (paras 27 & 29)

Bahasa Malaysia *Headnotes*

Pada 1980an, Kerajaan Negeri Negeri Sembilan memutuskan untuk membangunkan sebidang tanah ('tanah tersebut') menjadi zon perindustrian. Kerajaan Negeri Negeri Sembilan memberi milik tanah tersebut kepada Metro Angkasa Sdn Bhd ('Metro Angkasa') pada 1990. Walau bagaimanapun, beri milik ini dibatalkan pada 1992 apabila Metro Angkasa gagal membayar premium tanah dalam tempoh yang ditetapkan. Pada 1992, hak milik individu berasingan dikeluarkan dan didaftarkan atas nama responden ('defendan') untuk sekeping tanah, yang asalnya sebahagian tanah tersebut, untuk membangunkan sub-stesen kuasa. Untuk tujuan ini, defendan membina jalur transmisi atas tanah tersebut. Pada masa yang sama, Metro Angkasa berjaya merayu terhadap pembatalan jualan tanah tersebut kepadanya; tanah tersebut diberi milik kepada Metro Angkasa. Pada 1996, Metro Angkasa memajakkan tanah pada Southern Bank sebagai cagaran kemudahan perbankan yang diberi kepadanya. Tanah ini dirampas apabila Metro Angkasa ingkar dalam bayaran bulanannya dan dijual kepada CIMB Bank Bhd ('CIMB') pada 2006. Pada 2010, CIMB memeterai satu perjanjian jual beli untuk menjual tanah tersebut kepada Elitrop Sdn Bhd dan atas permintaan syarikat ini, CIMB memindah milik tanah tersebut kepada perayu ('plaintif') iaitu penamanya. Plaintif membantah kewujudan jalur transmisi. Plaintif memulakan tuntutan di Mahkamah Tinggi, terhadap defendan, atas alasan pencerobohan berterusan kerana jalur transmisi dibina atas tanah tanpa kebenaran Pihak Berkuasa Negeri. Membantah tuntutan, defendan menghujahkan (i) defendan memperoleh kebenaran tersirat daripada Pihak Berkuasa Negeri; (ii) tidak mungkin Pihak Berkuasa Negeri akan memberi milik tanah tersebut untuk pembinaan sub-stesen jika Pihak Berkuasa Negeri tidak membenarkan pembinaan jalur transmisi atas tanah; dan (iii) satu sub-stesen tidak berguna kecuali jika bersambung dengan grid elektrik melalui jalur transmisi. Dalam mempertimbangkan sama ada Pihak Berkuasa Negeri telah memberi kebenaran, Pesuruhjaya Kehakiman ('PK') mempertimbangkan dua sub-isu, iaitu (i) sama ada kebenaran untuk defendan membina jalur transmisi mesti dibuat secara bertulis; dan (ii) sama ada kebenaran mesti diberi oleh Jawatankuasa Eksekutif Negeri. Pihak-pihak di Mahkamah Tinggi mempertikaikan, antara lain, sama ada Akta Bekalan Elektrik 1990 ('Akta 1990') atau pendahulunya, Akta Bekalan Elektrik 1949 ('Akta 1949') terpakai. Pesuruhjaya Kehakiman berpendapat Akta 1990 terpakai kerana pembinaan jalur transmisi bermula pada 1992. Pesuruhjaya Kehakiman memutuskan s. 52 Akta 1949 dan s. 12 Akta 1990 tidak mensyaratkan agar kebenaran Pihak Berkuasa Negeri dizahirkan secara bertulis dan kebenaran mesti diberi oleh Jawatankuasa Eksekutif Negeri. Oleh kerana plaintif gagal membuktikan pencerobohan berterusan, PK menolak tuntutan plaintif. Maka timbul rayuan ini.

Diputuskan (menolak rayuan dengan kos)
Oleh Umi Kalthum Abdul Majid HMR menyampaikan penghakiman mahkamah:

(1) Dapatan PK bahawa peruntukan Akta 1990 terpakai dalam kes ini adalah betul kerana pembinaan jalur transmisi bermula pada 1992. Seksyen 12 Akta 1990 tidak mensyaratkan kebenaran Pihak Berkuasa Negeri dizahirkan secara bertulis. Seksyen 12 Akta 1990 seterusnya membenarkan kebenaran tersirat oleh Pihak Berkuasa Negeri. Tiada alasan untuk mengganggu dapatan PK bahawa Pihak Berkuasa Negeri secara tersirat, melalui tindak-tanduk pihak-pihak berkenaan, membenarkan pembinaan jalur transmisi atas tanah tersebut.

(2) Tentang isu orang atau badan-badan yang manakah yang sebenarnya mewakili 'Pihak Berkuasa Negeri', mahkamah bersetuju dengan rujukan PK pada Perlembagaan Negeri Sembilan, s. 3 Bahagian 1 Akta Tafsiran 1948 dan 1967 dan kes *PP v. Haji Harun Hji Idris* untuk pemutusan ini, dengan satu pembetulan. Daripada merujuk *Jawatankuasa* Eksekutif Negeri sebagai badan yang menjalankan fungsi-fungsi atas nama Pemerintah, rujukan sepatutnya dibuat pada *Majlis* Eksekutif Negeri. Minit-minit Majlis Eksekutif Negeri, bertarikh 8 Ogos 1990, yang dirujuk oleh PK, bertujuan menunjukkan kebenaran Pihak Berkuasa Negeri untuk pembinaan jalur transmisi. Jika Pihak Berkuasa Negeri tidak membenarkan pembinaan jalur transmisi, tidak mungkin minit-minit Majlis Eksekutif Negeri menyatakan sedemikian.

Case(s) referred to:
China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal [1996] 3 CLJ 163 FC ***(refd)***
Government Of The State Of Negeri Sembilan v. Yap Chong Lan & Ors And Another Case [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 FC ***(refd)***
Multi-Purpose Bank Bhd v. Diamond Agreement Sdn Bhd & Anor [2000] 2 CLJ 73 HC ***(refd)***
PP v. Datuk Hj Harun Hj Idris (No 2) [1976] 1 LNS 184 FC ***(refd)***
Tenaga Nasional Bhd v. Majlis Daerah Hulu Terengganu [2014] 9 CLJ 149 FC ***(refd)***
Tenaga Nasional Bhd v. Ong See Teong & Anor [2010] 2 CLJ 1 FC ***(refd)***

Legislation referred to:
Electricity Act 1949 (since repealed), s. 52
Electrity Supply Act 1990, ss. 12, 56(1)
Interpretation Acts 1948 and 1967, s. 3
Local Government Act 1976, ss. 137, 141
National Land Code, ss. 5, 12, 13, 15

Other source(s) referred to:
Bennion on Statutory Interpretation, 6th edn, p 313

A *For the appellant - Bee Chan & Chin Yu Yen; M/s Shyong Wee & Danny*
For the respondent - Alvin John, Steven Thiru, B Thinagaran & Gregory Das; M/s Alvin John & Partners

[Editor's note: For the High Court judgment, please see Fairise Odyssey Sdn Bhd v. Tenaga Nasional Bhd [2014] 1 LNS 842 (affirmed).]

B *Reported by Najib Tamby*

JUDGMENT

Umi Kalthum Abdul Majid JCA:

C **Introduction**

[1] This was an appeal against the decision of the learned Judicial Commissioner (JC) who dismissed the appellant's/plaintiff's claim with costs of RM30,000.

D **[2]** We heard the appeal and had unanimously dismissed it with costs of RM20,000 and ordered the deposit to be refunded. We now give our reasons for doing so.

[3] For ease of reference, we will refer the parties as they were in the court below.

E **Background Facts**

[4] The background facts are as laid out by the learned JC in her grounds of judgment and we reproduce them here with such modifications as are necessary.

F **[5]** The plaintiff's claim was in respect of a piece of land described as HS(D) No. 10045, PT No. 3980, Mukim Gemas, District of Tampin, Negeri Sembilan, measuring about 144.272 hectares (land). It was originally State land. In the 1980's the State Government of Negeri Sembilan decided to develop the land into an industrial zone. It approved the alienation of the G land to Metro Angkasa Sdn Bhd (Metro Angkasa) in 1990. The alienation was cancelled in 1992 when Metro Angkasa failed to pay the land premium within the stipulated period.

[6] In 1992, the defendant engaged HG Power Transmission Sdn Bhd H (HG Power) for the construction, installation and laying of high tension power transmission lines (transmission lines) on the land. The works were completed sometime in November 1994.

[7] In the meantime, Metro Angkasa successfully appealed against the cancellation of the sale of the land to it. On 22 October 1993, the land was I alienated to Metro Angkasa.

[8] Sometime in March 1996, Metro Angkasa charged the land as security to Southern Bank for banking facilities granted to it. The land was foreclosed when Metro Angkasa defaulted in its monthly payments and was sold to CIMB Bank Berhad (CIMB) on 2 August 2006. On 11 January 2010, CIMB entered into a sale and purchase agreement to sell the land to Elitprop Sdn Bhd (Elitprop) on a "as is where is basis". At the request of Elitprop, CIMB transferred the land to the plaintiff, its nominee, *vide* an agreement dated 1 November 2010.

[9] On 30 December 2010, the plaintiff, being the registered proprietor of the land, objected to the existence of the transmission lines which occupied about 5.4643 hectares of the land (disputed area). There is no endorsement on the document of title to show any encumbrance or the existence of the transmission lines on the land.

[10] It is not disputed that on 25 August 1992, a separate individual title was issued and registered in the defendant's name for a strip of land known as HS(M) 1561, PT No: 3926, Mukim Gemas, Negeri Sembilan, measuring 2.2356 hectares. That strip of land had originally been part of the land until it was carved out by the State Authority and given to the defendant for the construction of a power sub-station (TNB substation). The transmission lines are connected to the TNB substation and form part of the electricity grid that supplies power to residents living in the area from Gemas to Kuala Pilah.

[11] On 30 May 2011, the plaintiff filed this action against the defendant alleging continuing trespass. The plaintiff alleged that the transmission lines had been erected on the land without the approval of the State Authority.

[12] The plaintiff therefore sought in the main the following reliefs:

(a) a declaration that the use and/or possession of the disputed area by the defendant is unlawful and void *ab initio*;

(b) damages to be assessed and paid by the defendant to the plaintiff in respect of the loss of the disputed area by reason of paras. 11 and 12 of the statement of claim;

(c) damages for trespass over the disputed area;

(d) aggravated and exemplary damages;

(e) an order that the defendant shall deliver vacant possession of the disputed area to the plaintiff within seven days from the date of the order.

[13] It was contended by the plaintiff that the transmission lines constituted a continuing trespass to the land because it had been erected without the approval of the State Authority.

[14] The defendant had denied trespass and averred that it had the approval of the State Authority to do so. The defendant relied on implied approval. The defendant submitted that it was improbable that the State Authority would have alienated the land for the construction of the TNB substation if it had not approved the erection of the transmission lines on the land. A substation served no purpose unless it was connected to the electricity grid by the transmission lines. So therefore the State Authority had implicitly given its approval for the erection of the transmission lines when it approved the construction of the TNB substation.

At The High Court

[15] There was only one issue before the learned JC for her determination, which was:

> whether the State Authority had given their approval to the Defendant to construct, install and lay a 132 KV transmission lines over the Plaintiff's land which at the material time was State-owned land involving approximately 5.4643 hectares (the Disputed Area) out of the total of 144.272 hectares alienated, and if in the affirmative whether such approval binds all parties who have taken ownership of the Land including the Plaintiff?

[16] Before answering the agreed issue, the learned JC considered two sub-issues raised by the plaintiff, they were:

(a) whether the approval for the defendant to construct the transmission lines must be in writing?

(b) whether the approval must be given by the State Executive Committee?

Whether Approval Must Be In Writing

[17] As there was a dispute between the parties as to whether the Electricity Supply Act 1990 (1990 Act) or its precursor Electricity Act 1949 (1949 Act) was applicable to the present case, it is convenient to reproduce the relevant section of the said Acts, that is, s. 52 of the 1949 Act and s. 12 of the 1990 Act as follows:

> 1949 Act
>
> 52. For the purpose of constructing a supply line for any Board installation, the Chairman or any person authorised by him in that behalf may, at all reasonable times, enter upon any State land and may, **subject to the approval of the State Authority**, erect in or upon that State land such posts and other apparatus as may be necessary or proper for the purposes of the installation, and may carry out all necessary works in connection therewith, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary to the said purposes:
>
> Provided that:
>
> (a) when any such work interferes with improvements, buildings, growing trees or crops, the Board shall pay compensation in accordance with section 58 for disturbance or damage; and

(b) where the land is occupied under a licence for temporary occupation, the compensation shall be paid to the occupant under the licence, and where the land is occupied under an approved application, such compensation shall be paid to the applicant recorded in the roll of approved applications, by whatever name such roll is called in the State wherein the land is situate.

1990 Act

12. Supply lines and other equipment on State land

(1) **Subject to the approval of the State Authority and to such conditions as the State Authority may deem proper**, a licence may extend to authorising the licensee to lay, place or carry on, under or over State land, to the extent and in the manner specified in the licence, such supply lines and to erect and maintain in or upon State land such posts and other equipment as may in the opinion of the Commission be necessary or proper for the purposes of the licensed installation, and subject always to the approval of the State Authority, the said authorisation may be given or added to at any time during the currency of the licence by endorsement thereon under the seal of the Director General.

(2) All equipment placed in or upon State land which is not removed therefrom within six months, or such longer period as the State Government may permit, after the expiration or early determination of the licence under the authority whereof of the same was so placed, shall vest in and become the property of the Government of the State wherein the same is situated.

(emphasis added)

[18] The learned JC was of the view that the 1990 Act was applicable to the present case as the erection of the transmission lines had commenced in 1992. In any case, she found that whether it was the 1949 Act or the 1990 Act, both Acts require the defendant to obtain the approval of the State Authority. So the question arose whether the approval must be in writing. After referring to several authorities (*Bennion on Statutory Interpretation*, 6th edn, s. 313; *Multi-Purpose Bank Bhd v. Diamond Agreement Sdn Bhd & Anor* [2000] 2 CLJ 73; [2000] 5 MLJ 576; *Tenaga Nasional Bhd v. Ong See Teong & Anor* [2010] 2 CLJ 1; [2010] 2 MLJ 155), the learned JC found that both s. 52 of the 1949 Act and s. 12 of the 1990 Act did not require the approval of the State Authority to be expressly in writing. Therefore the statutory language must be read in its plain and ordinary context, which is, both provisions permit express and implied approval of the State Authority.

Whether Approval Must Be Given By The State Executive Committee?

[19] Since both s. 52 of the 1949 Act and s. 12 of the 1990 Act refer to the term "State Authority", the plaintiff argued that it referred to the State Executive Committee based on the articles in The Laws of the Constitution of Negeri Sembilan 1959 (Negeri Sembilan State Constitution) and s. 3 of the

Part I (the Interpretation Acts 1948 and 1967) as well as the Federal Court case of *PP v. Datuk Hj Harun Haji Idris (No 2)* [1976] 1 LNS 184; [1977] 1 MLJ 15, at p. 20, where it was held that:

> ... It is the Executive Council who is the executive organ of the State Authority and exercises executive functions in the name of the Ruler ...

[20] The defendant argued that, with reference to ss. 5, 12, 13, 15 of the National Land Code (NLC) and the Federal Court case of *Government Of The State Of Negeri Sembilan v. Yap Chong Lan & Ors And Another Case* [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144; [1984] 2 MLJ 123, "State Authority" refers to the State Director of Lands and Mines.

[21] After due consideration of the parties' arguments, the learned JC agreed with the submission of the plaintiff and that the approval must be given by the State Executive Committee.

[22] The learned JC then considered whether the defendant had the implicit approval of the State Authority. She concluded that the evidence tendered by the defendant showed that the defendant had the approval of the State Authority and that the approval bound all parties who have taken ownership of the land subsequent to its alienation to Metro Angkasa. The learned JC found that the plaintiff had failed to prove continuing trespass and proceeded to dismiss the plaintiff's claim. This what the learned JC stated, at paras. 40 to 43 of her grounds of judgment:

> 40. I now come to the critical issue in this case, *to wit*, did TNB have the implicit approval of the State Authority to erect the transmission lines on the land.
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> 41. The State Executive Committee minutes of 8 August 1990 clearly demonstrates that the State Authority was aware of TNB's plan to erect a transmission line which would run from Kuala Pilah to Gemas. The minutes further show that it was for this specific reason that the State Authority had alienated land to TNB for the construction of a TNB substation on the land. A substation without a transmission line would serve no purpose. It is the transmission line, that connects the electricity system from Kuala Pilah to Gemas. It facilitates the transfer of power to consumers from the power stations and substations. For these reasons, it appears to me that that the State Authority not only did not object but approved the construction of the transmission lines. In my view, by their conduct, the State Authority had implicitly approved the erection of the transmission line on the land. In this regard, I refer to the Kertas Kerja attached to the minutes of the State Executive Committee meeting dated 8 August 1990 ("kertas mesyuarat bil. 1168/90"). It read in part as below:
>
> Tujuan
>
> Tujuan kertas kerja ini adalah untuk mendapatkan pertimbangan Majlis Mesyuarat Kerajaan Negeri terhadap:
>
> (i) Permohonan dari Syarikat Angkasa Sdn Bhd untuk memiliki dan memajukan tanah kerajaan seluar 400 ekar di Mukim Kuala Gemas, Daerah Kecil Gemas sebagai kawasan perusahaan;

(ii) ....

Latarbelakang

Kawasan yang dipohon merupakan tanah kerajaan seluas 400 ekar terletak di Mukim Kuala Gemas daerah kecil Gemas. Kawasan ini terletak 23 km di utara Pekan Gemas berhampiran dengan Sungai Gemas dan bersempadan dengan daerah Segamat di Negeri Johor di sebelah selatannya ...

Kemudahan Infrastruktur

Dari segi kemudahan infrastruktur beberapa program pembangunan telah dirancangkan oleh Jabatan-jabatan/Agensi yang terlibat.

Bekalan Elektrik

Pihak LLN telah merancang untuk membina 2 buah Pencawang Masuk Utama (PMU) dikawasan dengan keupayaan 2 x 30 MVA. Projek ini akan dibuat melalui projek pemasangan kabel LLN dari Segamat ke Kuala Pilah yang melalui kawasan Gemas. Sebuah tapak pencawang seluas 4 ekar telah diluluskan oleh Pentadbir Tanah Daerah Kecil Gemas bagi keperluan ini, berdasarkan dengan kawasan tanah yang dimohon.

(emphasis added)

42. In my judgment, the absence of any endorsement on the register of title, does not vitiate the implied consent given to TNB. I accept the evidence of Khairil that the existence of the transmission lines is not endorsed on the register document of title as no survey has been done as the land is still held under a qualified title. It would be endorsed on the final title only after a survey is done.

43. On the evidence, it is clear that since 1992, the transmission line has been on the subject land. There is no evidence that any of the original owners had ever objected to the presence of the transmission line. Where there is a lengthy period during which materials remain on the land without objection or without a request for those materials to be removed, the law does not permit a landowner to assert a claim in trespass. In the instant case, there is no evidence that either the State Authority or Metro Angkasa or CIMB had protested about the transmission line ...

[23] Not happy with the learned JC's decision to dismiss the plaintiff's claim, the plaintiff now appealed to us.

The Appeal

[24] Before us, the plaintiff only raised one issue, that is, whether the State Authority had given its approval to the defendant, whether under s. 52 of the 1949 Act or s. 12 of the 1990 Act.

[25] At the outset, we found that the learned JC's finding that the provisions of 1990 Act applied to this case was correct as the erection of the transmission lines had commenced in 1992. The 1990 Act came into force

on 1 September 1990 (see P.U.(B) 494/1990). Section 56(1) of the 1990 Act provides that "The Electricity Act 1949 and the Electrical Inspectorate Act 1983 are hereby repealed." So on 1 September 1990, the 1949 Act was repealed. Our focus will therefore be on the provisions of s. 12 of the 1990 Act.

[26] We agreed with the learned JC's finding that based on the authorities cited by her (see para. 18 above), s. 12 of the 1990 Act did not require the approval of the State Authority to be expressly in writing. As per Zulkefli CJ (Malaya) (as he then was) (delivering the judgment of the Federal Court) in *Tenaga Nasional Bhd v. Majlis Daerah Hulu Terengganu* [2014] 9 CLJ 149; [2014] 6 MLJ 800, at p. 160 (CLJ); p. 809 (MLJ), para. 16:

> .. It is a principle of interpretation of statute that the words used in a section must be given their plain grammatical meaning ...

We also agreed with the learned JC's finding that s. 12 of the 1990 Act permits the express or implied approval of the State Authority.

[27] With regards to the issue of which person or body of persons who actually represents the "State Authority", we again agreed with the learned JC's reference to the Negeri Sembilan State Constitution, s. 3 of Part 1 of the Interpretation Acts and the case of *PP v. Haji Harun Haji Idris* (*supra*) for this determination with one correction. That is, we found that instead of referring to the "State Executive Committee" as being the body of person exercising the executive functions in the name of the Ruler, it should have been reference to the "State Executive Council". See art. XXXV of the Negeri Sembilan State Constitution which provides as follows:

> Executive
>
> XXXV. (1) The executive authority of the State shall be vested in the Ruler and exercisable, unless otherwise provided by the Federal Constitution or this Constitution, by his Highness or by the State Executive Council or any member of the **State Executive Council**, authorised by the State Executive Council, but executive functions may by law be conferred on other persons or authorities.
>
> (2) All executive authority of the State shall be expressed to be taken in the name of the Ruler.
>
> (emphasis added)

In fact, when the learned JC made reference to the "State Executive Committee" minutes of 8 August 1990, she was actually making reference to the "State Executive Council" minutes.

[28] As for the learned JC's finding of fact that the State Authority had implicitly *vide* conduct of the relevant parties approved the erection of the transmission lines on the land, we saw no reason to disturb her finding (see para. 22 above). It is trite law that an appellate court should be slow in

disturbing the finding of facts by the trial court and we did not see the necessity to do so (see *China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal* [1996] 3 CLJ 163).

[29] The plaintiff's counsel drew our attention on the Federal Court decision of *Tenaga Nasional Bhd v. Majlis Daerah Hulu Terengganu (supra)* (*Majlis* case) in particular para. 14, on the need to furnish any credible evidence such as the extract copy of the decision of the Majlis Mesyuarat Kerajaan Negeri Terengganu ('the State Authority') and its gazette notification to support the Majlis Daerah Hulu Terengganu's contention that the 1999 valuation list had been extended by the State Authority. We were of the view that the *Majlis* case was not relevant for the purpose of construing s. 12 of the 1990 Act as the *Majlis* case was centred on the interpretation of ss. 137 and 141 of the Local Government Act 1976 relating to rates and assessment thereof, which obviously were not in issue in our case. In any event, in our case, the minutes of the State Executive Council dated 8 August 1990 referred to by the learned JC served the purpose of showing the State Authority's approval of the construction of the transmission lines. If the State Authority did not approve the construction of the transmission lines, it would not be possible for the said minutes of the State Executive Council to be so worded.

Conclusion

[30] Based on the above reasons, we did not find any appealable error in the learned JC's decision, taking into consideration the facts of the case and the conduct of parties. We unanimously dismissed the plaintiff's/appellant's appeal with cost of RM20,000 and ordered the deposit be refunded.